

§ 12:24.50 New “specialty occupation” nonimmigrant visa categories [NEW]

H-1B1 Visa (Chile & Singapore)

Recent free trade agreements with Chile and Singapore have created a new category of nonimmigrant visa, the H-1B1. This visa classification is similar to the H-1B in that the beneficiary must work in a “specialty occupation.” The same definition of “specialty occupation” used for the H-1B visa is applied to the H-1B1.¹

Alternative credentials, however, are accepted for Chilean and Singaporean nationals in the occupations of Disaster Relief Claims Adjuster and Management Consultant who possess specialized training and three years experience in lieu of the standard Bachelor’s degree requirement.² Agricultural Managers and Physical Therapists from Chile who possess a post-secondary certificate in the specialty and three years experience may also qualify for H-1B1 status without a Bachelor’s degree.³ Consular officers may accept specified documentary evidence of alternative credentials.⁴

There are several other differences between the H-1B1 and the H-1B. First, no DHS petition is required for the H-1B1.⁵ Applicants may obtain their visas directly from the U.S. consulate after providing a certified Labor Condition Application (LCA) and a written of-

⁴January 29, 2001 Memorandum of Michael A. Pearson, INS, reprinted in 78 Interpreter Releases 381-383 (Feb. 12, 2001).

⁵January 29, 2001 Memorandum of Michael A. Pearson, INS, reprinted in 78 Interpreter Releases 381-383 (Feb. 12, 2001).

⁶January 29, 2001 Memorandum of Michael A. Pearson, INS, reprinted in 78 Interpreter Releases 381-383 (Feb. 12, 2001).

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¹9 FAM § 41.53, n. 28.4(a). See also 8 U.S.C.A. § 1184(i)(1)(A),(B); 8 C.F.R. § 214.2 (providing the statutory and regulatory definition of “specialty occupation”).

²9 FAM § 41.53, n. 28.4(b).

³9 FAM § 41.53, n. 28.4(b).

⁴9 FAM § 41.53, n. 28.4(b).

⁵9 FAM § 41.53, n. 28.2.

fer of employment.⁶ However, if the H-1B1 applicant wishes to change status, extend his or her status, or change employers, he or she must file Form I-129 with the USCIS Nebraska Service Center.⁷ In addition, H-1B1 applicants are not required to obtain professional licensure as a prerequisite for admission. They may do so after their admission where required by their profession.⁸

Another difference between the H-1B1 and the H-1B is that the H-1B1 visa is issued for one year, with one-year extensions for an indefinite period of time.⁹ Upon every second extension, a new LCA must be filed.¹⁰ The visa validity period will be limited to that of the underlying LCA.¹¹ In order to extend his or her status, an H-1B1 applicant must prove that he has no intention of abandoning his residency abroad and establishing Legal Permanent Residence in the United States.¹² The H-1B1 applicant must submit evidence that his or her stay in the United States will be temporary, such as a letter or contract of employment stating that such employment is on a temporary basis.¹³

The H-1B1 visa category is subject to an annual limit of 6,800 visas, with 1,400 visas allocated to Chilean nationals and 5,400 visas to Singaporean nationals.¹⁴ Initial applications for H-1B1 visas, sixth-year extensions, and all subsequent extensions of stay are counted against the 6,800 limit.¹⁵ To the extent that these H-1B1 visas are used, they are deducted from the 65,000 annual H-1B cap. Unused H-1B1 visas are released at the end of each fiscal year and made available to H-1B aliens during the first 45 days of the new fiscal year.¹⁶ Spouses and children of principal applicants are granted H-4 visas which are not counted toward either the H-1B1 or H-1B cap.

⁶9 FAM § 41.53, n. 28.2, 28.3.

⁷9 FAM § 41.53, n. 28.7(f). See also Memorandum of USCPB Assistant. Comm. of Field Operations Jayson Ahern, "Free Trade Agreements with Chile and Singapore," (April 19, 2004); Memorandum of USCIS Associate Dir. Of Op. William Yates, "Lifting the Numerical Cap on Mexican NAFTA Nonimmigrant Professionals ("TN") and Free Trade Agreements with Chile and Singapore," (Jan. 8, 2004).

⁸9 FAM § 41.53, n. 28.6.

⁹9 FAM § 41.53, n. 28.5(b). But see the websites of the U.S. Embassy in Singapore and Chile at http://singapore.usembassy.gov/fta_visas.html; www.usembassy.cl (stating that H-1B1 visas are issued for 18 months at a time).

¹⁰Ira Kurzban, *Immigration Law Sourcebook*, Chap. 5, § VII(I)(2)(e) (10 ed. 2006).

¹¹9 FAM § 41.53, n. 28.3(b).

¹²9 FAM § 41.53, n. 28.5(a).

¹³9 FAM § 41.53, n. 28.7(d).

¹⁴9 FAM § 41.53, n. 28.1.

¹⁵9 FAM § 41.53, n. 28.1.

¹⁶9 FAM § 41.53, n. 28.1(b).